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INTERNET FREEDOM

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THE UNIVERSITY PROFESSORS AND ENGINEERS WHO CREATED THE NET WERE GEEKS, SO RATHER THAN SIMPLY NAMING THIS CONCEPT *INTERNET FREEDOM*, THEY WAITED UNTIL SOMEONE COINED THE GEEKY PHRASE *NET NEUTRALITY*. YOU'LL HEAR THOSE WORDS OFTEN IN THE COMING MONTHS AND YEARS BECAUSE THE NATION'S INTERNET SERVICE PROVIDERS AND SIX MEDIA CONGLOMERATES ARE GATHERING THEIR FORCES TO CONTROL THE NET.

tragedy of a boy killed for his running shoes. The network felt the episode might offend the advertisers. Since the network also owned the show, there was no independent production company to protest, no voices in management to back up the writer. He felt like Gary Cooper in *High Noon*, "only my Grace Kelly got on the train. There was nobody to cover my back." The episode was never filmed.

And the line between news and entertainment divisions, hallowed in the days of the late Walter Cronkite, has been erased. Broadcast news divisions have been gutted, and the so-called commentators of cable rail like shock jocks, preaching to the converted in pursuit of ratings. The 1980s "marketplace of ideas" is now an empty Walmart on a country highway. The signs out front still promise choice and variety, but inside there's only one product left. And there's lead in its paint.

Why? Because the repeal of the financial interest and syndication rules transformed the free market of American media into an oligopoly of six, controlling not only profits but nearly all news and entertainment. The effect on creativity has been stifling. The renaissance of American film in the 1970s seems a distant shadow now. These days, movies aren't just made from comic books. They're made from toys like Transformers, Barbie, and G.I. Joe and soon from board games like Candyland. In this climate, getting a dramatic or historical feature film produced by a major studio is nearly impossible. Agents tell their clients there are no screenplay assignments for adult dramas anymore. And because these six conglomerates control not just production but also distribution, there has been nowhere else for most writers to turn. Until the Internet...

More Than Porn

In the Broadway musical *Avenue Q*, puppets and humans in a New York borough confront the problems of everyday life. In one song, the puppet Kate, ever the optimist, rhapsodizes: "The Internet is really, really great!" Trekkie Monster, the cynic, snarls back: "For porn!" The song continues, with Kate extolling every virtue of the Internet, only to be interrupted by Trekkie's droll refrain, "The Internet is for porn!"

More than a few believe the Internet was created for porn, since pornography rakes in such huge profits. But it was cre-

ated by university professors with public funds and resources. Their goal was noble: the free exchange of ideas. And it all began in the USA. Forty years ago, UCLA engineers connected two computers and transferred bits of information between them, creating the ARPANET—a project funded by the U.S. government that would one day become the Internet.

By its very nature, the Internet was quickly internationalized. Created, tweaked, and finessed by millions of people from every corner of the globe, the Internet provided a freedom of choice that made it the most democratic medium since the invention of the printing press. Dictatorial regimes have grown to recognize and fear its power, as witnessed by recent shutdowns of the Internet in Iran and China to quell political dissent. Saudi Arabia aggressively polices the Internet for pornography and anything else viewed as anti-Islamic. In countries like North Korea, the Internet as we know it doesn't even exist. But cross the 38th Parallel into South Korea and you'll find 99 percent of the population connected to the net. Today, the democratic spirit of a nation is measured not only by the freedom of its press, but by the freedom and accessibility of its Internet.

That freedom was the original intention of the Internet's creators—an electronic forum where ideas and innovations could thrive, unregulated by government or corporate power. By design, they constructed a chaotic system of managing traffic that brought equality of access to every website. They believed the company that connects you to the Internet should not limit your choices nor interfere with the legal content of sites. The university professors and engineers who created the net were clearly principled people. But they were also geeks, so rather than simply naming this concept *Internet Freedom*, they waited until someone coined the geeky phrase *net neutrality*.

You'll hear those words often in the coming months and years because the nation's Internet Service Providers (ISPs) and those six media conglomerates are gathering their forces to control the net. FCC Chairman Julius Genachowski delivered a historic speech recently to the Brookings Institution that was a clarion call to action. He proposed formal rules to ensure that every American has access to a robust Internet. Genachowski said, "The rise of serious challenges to the free and open Internet puts us at a crossroads. We could see the Internet's doors shut to entrepreneurs, the spirit of innovation stifled, a full and

free flow of information compromised. Or we could take steps to preserve Internet openness, helping ensure a future of opportunity, innovation, and a vibrant marketplace of ideas.”

The battle for Internet Freedom will soon intensify. The forces of Big Media will reframe Genachowski’s argument, telling us they intend to stop government regulation or combat piracy on the web. But their real motives are profit and control. Just as they consolidated other media over the past 20 years, stifling competition and creativity, they want to end net neutrality and change the Internet forever. George Bernard Shaw said, “We learn from history that we learn nothing from history.” If that’s true and we fail to act, we might be experiencing the last days of the Internet as we know it.

A Brief History of Time . . . Warner

Originally, we were all connected to the Internet through the phone lines. The telephone system was already regulated by “common carrier” laws that prohibited AT&T, for example, from blocking your phone connection to a Verizon customer. No telephone company could restrict your calling access to anyone. Sounds fair, doesn’t it? In the early 20th century, our government, supported by popular opinion, had decided the phone system was a vital public utility. Telephone service was considered too valuable and essential to allow any company to prevent Americans from communicating with other Americans, just because their phone lines were operated by the competition.

Today, Internet providers, many of them phone companies, have connected us to a new pipeline: broadband cable. Net neutrality, the cornerstone of the original system, was protected by common carrier law when everyone had telephone modems. There was no need for legislation to preserve freedom of the Internet because such laws already existed. But the ISPs and media conglomerates are claiming the new pipeline is not subject to previous rules even though Internet communications are at least as valuable and essential as telephone conversations. In fact, email is largely replacing the “snail mail” of the U.S. Postal Service. (This alone should qualify the Internet as a public utility and ensure net neutrality.)

Internet providers use public resources, public rights of way, and even public airways via wireless modems in airports, train stations, etc. There’s a big difference between the Internet and cable TV, a completely closed network where companies like Comcast and Time Warner Cable get to decide your channel lineup. The Internet is a network open to everyone, a vital communication source carrying business transactions, email, and even phone conversations through services like Skype.

That doesn’t mean Internet providers shouldn’t charge consumers to access the web through their pipelines. But the fact that we pay them for entering the largest library in history doesn’t mean they get to own all the books too. And if content creators—“the books in the library”—must also pay for access to consumers, as Internet providers argue, the fastest download speeds will go to the highest bidders, net neutrality will quickly disappear, and a new age of unequal access will

begin. In such a brave new world, a handful of corporations will not just control newspapers, radio, movies and television, as they do today—they will control the Internet as well.

The irony, of course, is that the Internet was created by the people, not by media conglomerates or ISPs. The sole reason AT&T built its pipeline is to connect to the vast wealth of content and applications already found on the web. Content that consumers not only want but created through blogging, email, Facebook, Myspace, and more. The Internet wasn’t made for porn. It was made for and by everyone; it belongs to everyone.

In 2005, the Federal Communications Commission responded to growing public awareness of what’s at stake by adopting a Policy Statement in support of Internet Freedom. It clearly advocates the preservation and promotion of “the open and interconnected nature of the public Internet.” But a Policy Statement is unenforceable. There is still no legislation ensuring net neutrality on the broadband network. President Obama supports such a law and FCC Chairman Genachowski’s speech calling for an open Internet is encouraging. But just as the health insurance debate rages with hysteria stoked by the misinformation of big pharma and the medical insurance lobby, so are the media conglomerates and Internet providers readying to stop any legislative effort in its tracks. In just the first six months of 2009, cable and telephone companies have spent \$47 million on lobbying efforts in Washington, and have hired more than 500 lobbyists.

It’s not that Big Media is out to destroy democracy. They just smell profits and are poised to do what any good conglomerate does—gobble up the competition. But in 2005, with the launch of a little media upstart called YouTube, their competition suddenly got a lot stiffer. Quickly, the net evolved from being an information and communication source to an entertainment resource. A year after YouTube’s launch, the site served 100 million video views a day, and 200 million by 2009. The broadcast networks began to offer their television content online. Consumers could watch free online episodes of TV classics as well as recent series hits like *The Office* or *Lost*. Seemingly overnight, the Internet became a new market for reruns of television shows and movies, as well as an outlet for original content.

It didn’t take long for the creative community of writers, directors, producers, composers, actors and musicians to realize the Internet is our future. That’s why, in 2007, the Writers Guild of America engaged in a national 100-day strike over the Internet and our place in the future of the entertainment industry. To win residuals for reuse on the Internet and Guild coverage of original, New Media productions, we took to the street and the web to make our case. WGA members blogged about their struggles with the studios, and created viral videos to explain the strike to viewers or poke fun at studio bosses. Since then, WGA members have continued to push onto the Internet, creating original online content such as Joss Whedon’s *Dr. Horrible’s Sing-Along Blog* and Seth MacFarlane’s *Cavalcade of Comedy*. Both of these projects became Internet sensations, and both were independently produced by writers under Guild contracts.

A COLLEGE STUDENT STARTED FACEBOOK IN 2004. THE PHENOMENAL SUCCESS OF EBAY BEGAN ON A HOBBYIST'S PERSONAL WEBSITE. GOOGLE WAS CREATED IN A GARAGE. A GRADUATE STUDENT INVENTED NETSCAPE, THE FIRST COMMERCIAL SUCCESSFUL WEB BROWSER. THIS IS THE FREE MARKET AT ITS BEST. IF POLICYMAKERS EMBRACE THIS ENTREPRENEURIAL SPIRIT AND CODIFY FREEDOM OF THE INTERNET, THE ENTIRE WORLD STANDS TO BENEFIT.

The creative community's hard-won independence will disappear if net neutrality ends. The six media conglomerates will pay the ISPs for faster speeds. Imagine purchasing a download of *Iron Man* from Paramount and receiving it in a few minutes, then waiting hours for a controversial documentary or short. Consumers would soon lose patience with slow deliveries of independent content, and the Internet as we know it would be gone forever.

Yo-Ho, Yo-Ho, A Pirate's Life For Me!

Big Media can't control the Internet without first winning the net neutrality debate. To do that, they're already defining its terms. The "newspeak" of George Orwell's *1984* is quickly becoming the "corporatespeak" of 2009. Listen to Dan Glickman, chief of the Motion Picture Association of America, the trade organization for Big Media: "Government regulation of the Internet would impede our ability to respond to consumers in innovative ways..."

Government regulation is still the dirtiest phrase imaginable to big business. But today, no sane neoconservative will deny that the dismantling of financial regulatory structures in 1999 contributed to the global economic crash of 2008. If we've learned anything from this meltdown, we've learned to value common sense above ideology. In other words, not all government oversight is bad. Yet MPAA Chief Glickman, well-versed in corporatespeak, still tries to redefine freedom

of the Internet as "government regulation of the Internet." In truth, *Internet Freedom* just means preserving the web as it is right now.

Glickman and the media conglomerates know their rhetoric against Internet Freedom is hollow. So they've devised an argument focused on a very real threat to both Big Media and the creative community—piracy.

A movie I wrote, *The Great Debaters*, directed by and starring Denzel Washington, was still in the theaters early last year when someone showed me how pirated versions could be downloaded off the net. The download would take all day, but it was possible. I imagined nerds with eye patches stealing my residual payments, only it wasn't funny. It was deadly serious.

But we can and do fight piracy without Internet providers limiting our access to the web, or stifling legal innovation. Just last year, Congress passed legislation that launched an ambitious effort to curtail piracy—the PRO-IP Act. This act gave the Department of Justice new tools to find and prosecute thieves and also created a White House office dedicated to stamping out piracy. President Obama nominated Victoria Espinel to head this office as the first U.S. Intellectual Property Enforcement Coordinator. The Writers Guild, along with the entire creative community, supported the passage of the PRO-IP Act and will continue to support sensible solutions to piracy. New technologies like digital watermarking and digital fingerprinting hold great promise in the battle against online theft. And the major studios are working with many online providers, such as YouTube, to remove pirated videos from their sites.

Although the creative community supports these efforts to end piracy, we can't allow Big Media to make Internet Freedom synonymous with Internet theft. As the Independent Film and Television Alliance states, "Copyright enforcement is crucial to our industry, but that cannot be the rationale for abandoning the principles of open and competitive access, which are critical to ensuring a vibrant film industry and diversity of programming."

At this pivotal moment in history, independent talents can still hope to create content for the Internet that they own and control. More than 600,000 Americans now operate small businesses on eBay, bringing revenue and opportunity to the entire country. We can't watch idly as Big Media and the ISPs reenact restrictive, inhibiting policies of the past. The issue is not just Internet Freedom for the creative community. It's freedom for all.

Do Not Go Gentle Into That Good Night...

In free market theory, going back to seminal economists Adam Smith and David Ricardo, the well-being of society is tied to the idea of pure or perfect competition. This economic concept greatly influenced the founding fathers, particularly Thomas Jefferson. The notion is that real competition creates efficiency by ensuring that prices will be as low as possible, because no one will be able to dominate a market. But Smith predicted the rise of monopolies and oligopolies when he issued the following, rarely quoted warning: "People of the same trade seldom meet, even for merriment and diversion, but the conversation ends in a conspiracy against

the public, or in some contrivance, to raise prices.”

Pure competition exists for writers, directors, producers, actors, and all working Americans, regardless of what jobs they do. But competition among the media conglomerates is far from pure. Let’s not put them and the ISPs in a position to merrily conspire to profit by controlling what we read and watch on the Internet. Let’s get it right this time.

What, then, needs to be done? First, Congress and the FCC must confirm and codify the principle of net neutrality. Freedom of the Internet is the only way to ensure a semblance of fair competition between independent producers and media conglomerates. Although the FCC adopted such principles in 2005, Comcast and others are challenging their legality. It’s time for the FCC to establish rules that clearly support Internet Freedom, and for Congress to take the bold step of making net neutrality the law of the land.

But there is one element currently missing from the FCC Policy Statement on net neutrality—the principle of nondiscrimination. This means that all traffic on the Internet must be treated equally. Already, new devices are being launched that stack the deck in favor of the media conglomerates. One such device, offered by Zillion TV, would create “fast lanes” on the Internet to stream content owned by the media conglomerates directly to a viewer’s television. But prioritizing certain traffic disadvantages other traffic. This discrimination could seriously undermine the ability of smaller online video providers like Netflix to compete, because they’d be relegated to a slower lane on the Internet.

Nondiscrimination has been the guiding light of the Internet since its inception. The FCC and Congress must codify this basic principle to keep all Internet traffic equal, or net neutrality will cease to exist. Chairman Genachowski agrees, insisting that Internet providers should not be allowed to “pick winners by favoring some content or applications over others in the connection to subscribers’ homes.”

Lastly, Congress and the FCC should consistently monitor the actions of Internet providers. Policing net neutrality should not be left to consumers. We saw what happened to the financial markets without adequate oversight. Internet providers must be consistently held to the standard of maintaining net neutrality, and the FCC should have the means to respond to violations. Chairman Genachowski calls this “a transparency principle—stating that providers of broadband Internet access must be transparent about their network management practices.” Otherwise, the corporate censorship we’ve already experienced will continue to grow.

If we don’t act, independent producers and writers—already shut out of traditional media—will have few avenues left to distribute their content. How many creative voices do

we dare to mute? How many new, innovative products can we afford to lose? If the Internet remains free, fresh ideas and content will continue to flourish. If it doesn’t, who can assess the cost of what is lost, both creatively and economically?

If the FCC and Congress reaffirm the basic principles of net neutrality and nondiscrimination, we can expect the online marketplace to flourish. A college student started Facebook in 2004, a site that now has 300 million members. The phenomenal success of eBay began on a hobbyist’s personal website. Google was created in a garage. A graduate student invented Netscape, the first commercially successful web browser. Internet success stories like these abound. This is the free market at its best. If policymakers embrace this entrepreneurial spirit and codify freedom of the Internet, the entire world stands to benefit.



If we do not embrace this freedom, imagine the future in a town like Minot, North Dakota. One day, a single company could own the town’s radio stations, the local newspaper (if it still exists), the TV station, and the telephone and cable service. Throughout the country, the entire flow of information and entertainment would be controlled by a new regime of gatekeepers with a stranglehold on the pipeline we call the Internet. And when a citizen would post his blog in protest, no one would read it because it would take too long to find, or the Internet provider would refuse access to it. In a world like that, only corporations would enjoy the right of free speech. Americans, of all people, must never let that happen. **WB**

Robert Eisele, a WGA member since 1980, wrote The Great Debaters and the soon-to-be-released Hurricane Season. He was executive producer of the Showtime series Resurrection Blvd.